

No. 2021-300

JESUS CHRIST OPEN ALTAR CHURCH, LLC	§	IN THE DISTRICT COURT
Plaintiff	§	
V.	§	402ND JUDICIAL DISTRICT
CITY OF HAWKINS,	§	
ALVIN FLYNN, DONNA JORDAN, MIKE	§	
MAYBERRY, TOM PARKER, HOWARD	§	
COQUAT, WAYNE KIRKPATRICK,	§	
NORMAN OGLESBY, CODY JORGENSEN	§	
AND STEPHEN LUCAS,	§	
Defendants	§	WOOD COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO: THE HONORABLE JUDGE OF SAID COURT:

Comes Now, JESUS CHRIST OPEN ALTAR CHURCH LLC (hereinafter "Plaintiff" or the "Church"), Hawkins, Texas, filing this Plaintiff's Original Petition complaining against CITY OF HAWKINS, ALVIN FLYNN, DONNA JORDAN, MIKE MABERRY, TOM PARKER, HOWARD COQUAT, WAYNE KIRKPATRICK, NORMAN OGLESBY, CODY JORGENSEN and STEPHEN LUCAS (hereinafter "Defendants"). The Church would show the Court as follows:

I. DISCOVERY LEVEL

I.01 Plaintiff intends to conduct discovery under level 2 of Rule 190 Tex.R.Civ.Proc.

II. PARTIES, JURISDICTION AND VENUE

II.01 Plaintiff Jesus Christ Open Altar Church LLC is a limited liability company, located in Hawkins, Texas. Mark T. McDonald is an administrator, Trustee and the registered agent for service of the Plaintiff.

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II.02 Defendants City of Hawkins, Texas, Alvin Flynn, Donna Jordan, Mike Mayberry, Tom Parker, Howard Coquat, Wayne Kirkpatrick, Norma Oglesby, Cody Jorgenson, and Stephen Lucas may be served at Hawkins City Hall, 200 Beaulah Street, Hawkins, Texas or wherever they may be found.

II.03 The Court has subject matter jurisdiction over matter pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code and the Open Meeting Act ("OMA") 551.142. This court has personal jurisdiction over each and all Defendants because all Defendants are organized in residents of and or have principal offices in Wood County, Texas.

II.04 Venue is proper in this court and Wood County pursuant to Texas Civil Practice and Remedies Code Sec. 15.002 because the acts and causes arise out of the transactions that occurred in Wood County regarding open meetings and records and real property in this county.

III. FACTS

III.01 The Church won a lawsuit against the City of Hawkins where both the District Court and the Appellate Court ruled that the Church had title to the land located abutting Ash Street, Hawkins, Texas and the City had no title or title history to it. The Appellate Court ruled that the City had an unused, unmaintained easement. Indeed, two witnesses testified in court that the City never had, nor did it then have plans to utilize or maintain the easement.

III.02 Subsequent to such ruling and prior to July 9, 2018, the Church on numerous occasions made written requests to the City of Hawkins seeking abandonment of the City's easement over the Church property. The submission requested that the matter be brought before the City Council for consideration and vote. Such requests were unreasonably rejected by the Mayor.



III.03 On Monday July 9, 2018, a closed Special City Council meeting was held namely to Consider approval of Task Order Number HW106 Ash Street Improvements, a subject matter affecting the Church's property. The notice of meeting was posted on the City of Hawkins Bulletin Board at 3:20pm Friday, July 6, 2018. However, the City Ordinance required anyone wanting to speak at the meeting sign up by noon the preceding Thursday. The City's late notice foreclosed the opportunity of the Church to be put on the agendas to speak, and thus, resulted in the Church being denied of its rights to an open meeting on matters directly affecting the Church.

III.04 On June 28, 2019, as a result of the decision made on the closed meeting, one day following a letter by the Church's representative, the Church's attorney to the Mayor Tom Parker addressing the above issue, Mike Mayberry, a Hawkins city employee along with others unlawfully removed from and maliciously damaged the Jesus sign and other structures valued at some \$11,500 located on the Church's property.

III.05 Following the July 9, 2018 closed meeting, the City shut down Blackbourn Street without any consent from the Church that owns the abutting property for the purpose of building an expensive, unsafe and unnecessary road.

III.06 The Church made numerous requests based on the Texas Public Records Act for information related to the Blackbourn/ Ash Street controversy. The City and its attorney Alvin Flynn failed to respond or intentionally denied the Church's rights to access to such public records.

IV. CAUSES OF ACTION

IV.01 VIOLATION OF OPEN MEETING ACT. The Defendants in denial of the Plaintiff's opportunity to speak on the July 9, 2018 Special City Council meeting. They have jointly and

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severally violated Texas Open Meeting Act. The July 9, 2018 closed meeting led to a decision to close Blackburn Street, and to remove the Jesus sign causing damage to the Church's property.

IV.02 VIOLATION OF PUBLIC RECORDS ACT. Defendants City of Hawkins and Alvin Flynn jointly and severally failed to respond to the Church's requests for public records and intentionally denied the Plaintiff's rights to access such records in violation of the Texas Public Records Act. The Plaintiff sues for mandamus and injunction under Section 551.142 of Texas Public Records Act

IV.03 UNLAWFUL SEIZURE OF PROPERTIES. The City of Hawkins and its employee Mayberry jointly and severally removing and taking possession of the Church sign constitute unlawful seizure of the Church's properties, causing damages to the Church. The Church sues the Defendants jointly and severally liable for return of the Church's property and for monetary damages.

IV.04 VIOLATION OF FIRST AMENDMENT RIGHTS. The Church by establishing on its own property the sign "Jesus Welcome you to Hawkins" in exercising its constitutional rights of freedom of speech and freedom of religion is protected by the law. Such rights shall not be interfered by any individual or entities. The City of Hawkins' unlawful seizure of such sign constitute a violation of the Church's First Amendment rights. The Church sues the Defendants jointly and severally liable for knowingly violating the Church's First Amendment rights.

IV.05 VIOLATION OF TEXAS TRANSPORTATION CODE. Section 311.008 of Texas Transportation Code provides that the governing body of a general-law municipality by ordinance may vacate, abandon, or close a street or alley of the municipality *if a petition*



signed by all the owners of real property abutting the street or alley is submitted to the governing body. The City of Hawkins denied the Church and other abutting property owners the rights to speak on the matter of closing the Blacbourn Street. The City of Hawkins through closed meetings decided to shut down the said road without obtaining any consent from the Church in violation of the Texas Transportation Code.

IV.06 VIOLATION OF PUBLIC RECORDS ACT. Mayberry, Parker, Coquat, Kirkpatrick, Oglesby, Jorgenson and Lucas each in their capacity as employees and/or officers of City of Hawkins, a governmental body by denied the Church its rights under OMA and Texas Public Records Act.

IV.07 BREACH OF FIDUCIARY DUTY. The Defendants Jordan, Mayberry, Parker, Coquat, Kirkpatrick, Oglesby, Jordan and Lucas breached their fiduciary duties owed to the citizens of the City.

WHEREFOR PREMISES CONSIDERED, Plaintiff moves this Honorable Court to award Plaintiff the following:

- a. Actual Damages and attorney fees.
- b. Consequential Damages, Exemplary and Punitive Damages
- c. Declaratory Relief and Writ of Mandamus to stop and reverse violations and invalidate all decisions made on July 9, 2018 meeting and other closed and improper meetings in violations of Plaintiff's rights under the OMA and Open Record Act.
- d. Order the City of Hawkins to deliver the requested public records to the Church.
- e. Abandonment of City's easement on the Church's property.
- f. All relief at law and in equity to which the Church may show justly entitled.

Respectfully submitted,



LAW OFFICE OF WILLIAM R. POWER

/s/ William R. Power

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Donna Huston, District Clerk

STATE OF TEXAS

COUNTY OF WOOD

I, Donna Huston, District Clerk of Wood County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, on file in my office this

23 day of July, 2001.

Donna Huston, District Clerk

Wood County, Texas